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# Searching for Coherence in Global Economic Policymaking

Pablo Zapatero\*

**Summary:** The International Monetary Fund, the World Bank, and the World Trade Organisation have developed a coordination structure aimed at achieving coherence in global economic policymaking. This mechanism, promoting global state regulatory convergence under the master value of economic liberalization, excludes “non-economic” institutions. Searching for coherence in global economic policymaking through this restricted approach conflicts with the conventional meaning of “coherence” in international law as coherence typically is defined as “the absence of antinomies.” Correcting this state of affairs requires deeper coordination with the rest of “non-economic” global institutions and deferring to their norms, expertise, and findings.

## I. The Coordination of Global Economic Policymaking

The modern institutional architecture of global governance is comprised of a group of coexisting and interrelated international regimes, such as international institutions and treaties with a degree of institutionalisation. These regimes consolidate horizontal networks of inter-institutional relations on diverse stages of development. The mechanism of coordination between the International Monetary Fund (“IMF” or “Fund”), the World Bank, and the World Trade Organisation (“WTO”) stands out among them. This three-sided model of coordination promotes the convergence of agendas and activities in the areas of trade integration, development, and macroeconomic stability. Therefore, it is a major “node” in the global regulatory network of the world economy.<sup>1</sup> The degree of development of this institutional

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1. For more on the growth of regulatory networks for the governance of the world

framework contrasts with the relative fragility of its coordination vis-à-vis other global institutions. The mechanism has been institutionalised through a number of legal instruments which include references, as well as inter-institutional agreements. It is, in fact, one of the most advanced mechanisms of coordination in the practice of international institutional law.

This mechanism completes the unfinished, post-World War II international project of economic coordination known as the "Bretton Woods System." The Conference of Bretton Woods, which took place in New Hampshire in 1944, saw the creation of two financial institutions, the IMF and the World Bank, and envisaged a third pillar, the International Trade Organisation. This third institution, however, did not come to fruition. In its stead, one of the chapters of its failed constitutive treaty, the Havana Charter, was reformed to create the General Agreement on Trade and Tariffs ("GATT") in 1947.<sup>2</sup> This agreement was applied "provisionally" for half a century before the cultural and political conditions of the 1980s made it possible to initiate an ambitious round of trade negotiations known as the Uruguay Round, which took place from 1986 to 1994. The Uruguay Round gave birth to the WTO, a significant upgrade from the previous institutional structure of GATT, incorporated a package of administrative agreements in specific sectors, and established new rules concerning coordination between the three economic institutions.<sup>3</sup> Thus, modern WTO law includes a normative instrument aimed at encouraging coordination of the WTO with the IMF and the World Bank. This instrument, named The Ministerial Declaration on the Contribution of the World Trade Organisation to Achieving Greater Coherence in Global Economic Policymaking of 15 December 1993, contains the so-called "Coherence Mandate," which encourages the inter-institutional coordination of activities developed under the broad objectives of their constitutive treaties.

As a result, the three economic institutions are involved in a process

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economy, see Sol Picciotto, *Linkages in International Investment Regulation: The Antinomies of the Draft Multilateral Agreement on Investment*, 19 U. PA. J. INT'L ECON. L. 731-68 (1998).

2. For an explanation of the failure of the I.T.O. process, see William Diebold, Jr., *The End of the I.T.O.*, 16 ESSAYS IN INT'L FIN. (1952); see also William Diebold, Jr., *From the ITO to GATT-And Back?*, THE BRETTON WOODS-GATT SYSTEM: RETROSPECT AND PROSPECT AFTER FIFTY YEARS 152-73 (Orin Kirshner ed., 1996).

3. Coordination is one of the WTO functions expressly included in Article III of its constitutive treaty, together with facilitation of the administration of covered agreements (¶ 1), the incorporation of a permanent multilateral negotiating forum (¶ 2), administration of the Dispute Settlement Understanding (¶ 3), and the administration of the Trade Policy Review Mechanism (¶ 4). Agreement Establishing the World Trade Organisation, April 15, 1994, 1867 U.N.T.S. 154, 33 ILM 1144 [hereinafter WTO].

to produce synergies between their rules and policies.<sup>4</sup> Trade liberalisation is, in this sense, a global public policy where the purposes of the three institutions intersect. In fact, it is a purpose of the Fund “to facilitate the expansion and balanced growth of international trade and to contribute thereby to the promotion and maintenance of high levels of employment and real income and to the development of the productive reserves of all members as primary objectives of economic policy.”<sup>5</sup> The World Bank also has among its purposes “to promote the long-range balanced growth of international trade and the maintenance of equilibrium in balances of payments by encouraging international investment for the development of the productive resources of members, thereby assisting in raising productivity, the standard of living and conditions of labour in their territories.”<sup>6</sup> These interrelated purposes link directly with the purposes contained in the preamble of the WTO agreement.

The charters of the three institutions contain provisions relating to cooperation with other “intergovernmental organisations that have [related] responsibilities” (WTO)<sup>7</sup> or with “any general international organisations and with public international organisations having specialized responsibilities in related fields” (IMF and World Bank).<sup>8</sup> In addition, Article III of the WTO agreement establishes as one of the five functions of the organisational cooperation with the IMF, the World Bank, and their related bodies “a view to achieving greater coherence in global economic policymaking[.]”<sup>9</sup> Previously, coordination among the so-called “sister institutions” has been more intense. Nowadays, the Uruguay Round fully incorporates the multilateral trade system to this scheme.<sup>10</sup> Thus, the Declaration on Coherence, which resulted from the

4. An overview of the various coordination activities of these institutions can be found in WTO reports on coherence. The annual reports on coherence presented by the Director General of the WTO and the annual joint reports of the three organisations are of particular interest in this respect. For an introduction to inter-institutional coordination in the economic sphere, see Christian Tietje, *Global Governance and Inter-Agency Cooperation in International Economic Law*, 36 J. WORLD TRADE 501-15 (2002).

5. Articles of Agreement of the International Monetary Fund, July 22, 1944, 60 Stat. 1401, 2 UNTS 39, art. I, ¶ ii [hereinafter IMF].

6. Articles of Agreement of the International Bank for Reconstruction and Development, art. I, ¶ iii, July 22, 1944, 60 Stat. 1440, 2 U.N.T.S. 134, amended Dec. 16, 1965, 16 U.S.T. 1942, 606 U.N.T.S. 294 [hereinafter World Bank].

7. WTO, *supra* note 3, at art. V.1.

8. IMF, *supra* note 5, at art. X; World Bank, *supra* note 6, at art. V.8, ¶ A.

9. WTO, *supra* note 3, at art. III.5.

10. For more on the complementary nature of the jurisdictions of these two institutions, see Joseph Gold, *The Relationship Between the International Monetary Fund and the World Bank*, 15 CREIGHTON L. REV. 499-520 (1982). For a critical overview, see Richard E. Feinberg, *The Changing Relationship Between the World Bank and the International Monetary Fund*, 42 INT'L ORG., 545-60 (1988).

Uruguay Round, synthesises the shared vision of the three institutions. The objective of the instrument is to promote the “coherence of global economic policy-making” through coordination.<sup>11</sup>

The normative instruments resulting from the Uruguay Round also include a declaration on the relationship of the WTO with the IMF, an instrument that was adopted in 1994 and restates the relationship’s existing practices. The WTO law contains a complex set of references to the IMF and international monetary law. In fact, these are the most developed references of those incorporated in the law of the WTO.<sup>12</sup> Some notable provisions are those granting legal relevance to the Fund.<sup>13</sup> GATT states that the WTO “*shall consult fully* with the International Monetary Fund” (emphasis added)<sup>14</sup> when it is called upon to consider or deal with problems concerning monetary reserves, balance of payments, or foreign exchange arrangements.<sup>15</sup> This organisation “*shall accept all findings* of statistical and other facts presented by the Fund” (emphasis added)<sup>16</sup> relating to these questions in the course of such consultations such as the “determination of the Fund as to whether action by a contracting party in exchange matters is in accordance with the Articles of Agreement of the International Monetary Fund.”<sup>17</sup> The adoption of final decisions at the WTO “*shall accept the determination of the Fund* as to what constitutes a *serious decline* in the contracting party’s monetary reserves, a *very low level of its monetary reserves* or a *reasonable rate of increase* in its monetary reserves, and as to the financial aspects of other matters covered in consultation in such cases”

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11. Declaration on the Contribution of the World Trade Organisation to Achieving Greater Coherence in Global Economic Policymaking, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organisation, Declaration on the Contribution of the World Trade Organisation to Achieving Greater Coherence in Global Economic Policymaking, 33 I.L.M. 1125 (1994) [hereinafter Declaration on Consultation and Coherence].

12. For an exhaustive list of the provisions relative to the IMF in the agreements resulting from the Uruguay Round, see *References to the International Monetary Fund in the Agreements, Ministerial Decisions and Declarations Resulting from the Uruguay Round of Multilateral Trade Negotiations*, WT/GC/W/80 (Mar. 10, 1998). For a detailed description of WTO provisions referring to the IMF and their application, see Deborah Siegel, *Legal Aspects of the IMF/WTO Relationship: The Fund’s Articles of Agreement and the WTO Agreements*, 96 AM. J. INT’L L. 561-99 (2002).

13. See generally, General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. A-11, 55 U.N.T.S. 194, at art. XV [hereinafter GATT]; see also General Agreement on Trade in Services, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organisation, Annex 1B, Legal Instruments—Results of the Uruguay Round, 33 I.L.M. 1125 (1994) [hereinafter GATS].

14. GATT, *supra* note 13, at art. XV.2.

15. *Id.*

16. *Id.*

17. *Id.*

(emphasis added).<sup>18</sup>

Additionally, Article XII of the GATS states that the Ministerial Conference shall establish procedures for regular consultations with the goal of enabling such recommendations to be made to the member concerned. Article XII also establishes that “*all findings of statistical and other facts presented by the International Monetary Fund relating to foreign exchange, monetary reserves and balance of payments, shall be accepted and conclusions shall be based on the assessment by the Fund of the balance of payments and the external financial situation of the consulting Members*” (emphasis added).<sup>19</sup>

In essence, these provisions expressly regulate the ex ante acceptance by the WTO of findings and determinations produced by the Fund in relation to trade restrictions based on balance of payments considerations. The GATT provisions on balance of payments also are supplemented by the understanding relating to interpretation of Articles XII and XVIII.B.<sup>20</sup> Interestingly, the WTO law includes various clauses of conflict in favour of the IMF, both in the GATT and in the GATS. Thus, Article XV of the GATT determines that Members “shall not, by exchange action, frustrate the intent of the provisions of this Agreement, nor, by trade action, the intent of the provisions of the Articles of Agreement of the International Monetary Fund.”<sup>21</sup> At the same time, Article XIV.9 of the GATT states that nothing in the Agreement shall preclude the use of exchange controls or exchange restrictions “in accordance with the Articles of Agreement of the International Monetary Fund.”<sup>22</sup> In addition, Article XI of the GATS, regarding payments and transfers, establishes that “[n]othing in this Agreement shall affect the rights and obligations of the members of the International Monetary Fund under the Articles of Agreement of the Fund.”<sup>23</sup> Finally, Article XII.2 of the GATS, a provision on restrictions to safeguard the balance of payments, states that these restrictions should all be consistent with

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18. *Id.*

19. GATS, *supra* note 13, at art. XII.2, ¶ e.

20. The multilateral trading system and the IMF originally concentrated the greater part of their collaboration on balances of payments disequilibrium. The IMF provides assistance to countries implementing adjustment policies to correct those disequilibria. The WTO Balance of Payments Committee evaluates in consultation with the Fund, the suitability, opportunity and legality of (planned or adopted) trade restrictions on this basis. See generally Frieder Roessler, *The Relationship between the World Trade Order and the International Monetary Fund*, in *THE LEGAL STRUCTURE, FUNCTIONS AND LIMITS OF THE WORLD TRADE ORDER: A COLLECTION OF ESSAYS* 157-79 (Frieder Roessler ed., 2000).

21. See GATT, *supra* note 13, at art. XV.4.

22. *Id.* at art. XV.9, ¶ a-b.

23. See GATS, *supra* note 13, at art. XI.2.

the Articles of Agreement of the Fund.<sup>24</sup>

The multilateral trading system formally grants legal relevance to the IMF determinations within its legal system and institutional structure. The deference paid by the WTO to the Fund has a legal impact on the functioning of the Balance of Payments Committee, the Special Groups, and the Appellate Body. Thus, the IMF holds a position on the Balance of Payments Committee, facilitating basic financial information of member countries within consultation processes.<sup>25</sup> At the same time, by extension, it has certain legal status within the framework of the dispute settlement mechanism.<sup>26</sup> Therefore, the law of the WTO has a relatively structured network of provisions granting IMF legal relevance, something which cannot be said for the remainder of the international institutions having a bearing on the functioning of the multilateral trade system. Inevitably, the absence of references granting relevance to other international institutions and their rules makes a striking contrast with this web of references to the Fund.

Coordination between the WTO, the IMF, and the World Bank is focused on achieving the "coherence" of their particular policies. The main actors in the Uruguay Round negotiations were predisposed to increase inter-institutional coordination in the economic field. Thus, the group negotiating the Functioning of the GATT System ("FOGS") tackled several approaches and ideas relating to "global economic coherence."<sup>27</sup> As a result of this negotiating process, the Declaration of Marrakesh expressly confirms the resolution of ministers "to strive for greater global coherence of policies in the fields of trade, money and finance, including cooperation between the WTO, the IMF and the World Bank for that purpose."<sup>28</sup> The first milestone in this new process is the mandate granted to the WTO Director General by the General

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24. *Id.* at art. XI.1.

25. The Committee continues the general procedure known as full consultation procedure for consultations on restrictions for reasons of balance of payments and the simplified consultation procedure for developing countries. *Balance of Payments Import Restrictions—Consultation Procedures Documentation for Article XII:(b) and Article XVIII:(b) Consultations*, L/3388 (Apr. 28, 1970), GATT B.I.S.D. (18<sup>th</sup> Supp.) at 48-53 (1972); *Balance of Payments Import Restrictions Procedures for Regular Consultations on Balance-of-Payment Restrictions with Developing Countries*, L/3772/Rev.1 (Dec. 19, 1972), GATT B.I.S.D. (20<sup>th</sup> Supp.) at 47-9 (1974).

26. See Report of the Special Group, *India—Quantitative Restriction to the Import of Agricultural, Textile and Industrial Products*, WT/DS90/R (Apr. 6, 1999) [hereinafter Report of the Special Group]; see also Appellate Body Report, *India—Quantitative Restriction to the Import of Agricultural, Textile and Industrial Products*, WT/DS90/AB/R (Aug. 23, 1999) [hereinafter Appellate Body Report].

27. World Trade Organisation, *Functioning of the GATT System Group, Punta del Este Declaration* (Sept. 20, 1986), at Part E.

28. World Trade Organisation, *Ministerial Declaration of 15 April 1994*, MTN.TNC/W/143/Rev.1 ¶ 3 (1994).

Council to negotiate agreements on coordination.<sup>29</sup> These negotiations produced two subtly balanced legal instruments that constituted a new and singular model of inter-institutional coordination. Their main function is the promotion of dialogue and communication, as well as formal and informal institutional collaboration between these institutions.<sup>30</sup>

The coordination structure was nurtured by shared visions and cultural affinity. In this sense, the officials of the three institutions and the representatives of their respective members tended to perceive their purposes as interrelated. This perception has been reinforced in recent decades and, as a result, these organisations promoted institutional frameworks, aimed at contributing in a joint and coordinated way to the growth and stability of the world economy. The first joint report of the Managing Director of the IMF, the Director General of the WTO, and the President of the Bank captures their perception in this regard when stating that the three institutions share the objectives “within their respective jurisdictions”<sup>31</sup> of “facilitating the expansion of international trade and thereby contributing to the promotion and maintenance of high levels of employment and real incomes and to the efficient use of the resources of all members, thus underpinning sustainable growth.”<sup>32</sup> The statement also emphasises that “[t]here is *substantial agreement* among the three institutions as to the economic policies needed to achieve these objectives” (emphasis added).<sup>33</sup>

From that common ground, ministers of trade and finance aspire to promote coherence in global economic policies. This, no more and no less, is their explicit institutional target and, as a result, in 1995, the Executive Directors of the IMF and the World Bank and the Director General of the WTO constituted a High Level Working Group on Coherence aimed at developing coordination.<sup>34</sup> The Director General of the WTO explained this new development with full clarity to the General Council in 1997: “our task on Global Coherence is new, and is very

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29. See World Trade Organisation, General Council, *Agreements Between the WTO and the IMF and the World Bank*, WT/L/194 (Nov. 18, 1996).

30. *Id.*

31. World Trade Organisation, General Council, *Report of the Managing Director, President and Director-General on Coherence*, WT/GC/13 (Oct. 19, 1998).

32. *Id.*

33. *Id.* at ¶ 3.

34. World Trade Organisation, Statement of the Director General on Consultation and Coherence, *Agreements between the WTO, the IMF and the World Bank: Addendum*, WT/L/194/Add.1 (Nov. 18, 1996). Regular meetings are aimed at making recommendations to develop practices and new tools for achieving coherence in global economic policies. *Id.* See General Council, *Report of the Managing Director, President and Director-General on Coherence*, WT/GC/13 (Oct. 19, 1998).



important.”<sup>35</sup> It also stated that the rule relating to consultations contained in each of the agreements is in itself “a major and crucially important achievement.”<sup>36</sup> In this sense, “it provides us with what has up until now been missing[.]”<sup>37</sup> the formal engagement for the three organisations “to address the coherence issue together.”<sup>38</sup> Thus, this structure finally completes the original project foreseen in Bretton Woods.<sup>39</sup> The ministries of finance and trade are effectively the architects of a global coordination structure which responds solely to their specialized competences.

Therefore, coordination is promoted through the rules contained in their treaties, the new negotiated inter-institutional agreements, as well as other, less formalised, processes.<sup>40</sup> Most of the resulting procedures and processes of coordination focus on institutional communication, dialogue, and sharing of information. In this sense, there are a high number of both formal and informal technical consultations, tripartite and bilateral meetings through which these institutions develop synergies and avoid contradiction on matters of common interest. For example, under this structure of coordination the IMF’s policy advice on balance of payments stability is required to take into due account the World Bank’s policy advice on sector reforms, and vice versa. In order to avoid inconsistencies, the World Bank and the IMF’s own missions in the field also are instructed to consult with each other and WTO personnel on issues of connected competence. Similarly, the WTO Secretariat and the staff of the IMF and the World Bank participate in regular high level consultation meetings. Moreover, several dialogue forums encourage the exchange of information. These forums include the annual meetings of the Governing Boards of the IMF and the World Bank, the Committee of the IMF Executive Board on WTO-IMF Relations, the Development Committee, the General Council of the WTO, and the High Level Working Group on Coherence. In essence, coordination takes place

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35. World Trade Organisation, Report by the Director-General, *Agreements between the WTO, the IMF and the World Bank*, WT/GC/W/68 (Nov. 13, 1997).

36. *Id.*

37. *Id.*

38. *Id.* at ¶ 2, ¶ 7.

39. There are some holistic views in respect to the functions of the three combined institutions. The idea of being on the verge of creating an authentic “system of collective economic security” is one of them. Peter Sutherland, *Globalization and the Uruguay Round*, in *THE URUGUAY ROUND AND BEYOND: ESSAYS IN HONOUR OF ARTHUR DUNKEL* 152 (Jagdish Bhagwati & Mathias Hirsch eds., 1998).

40. The WTO Secretariat describes direct contact between officials as a “decentralized process” to avoid bureaucracy, which functions “very well” both between the institutions and within them. World Trade Organisation, Note by the Secretariat, *Coherence in Global Economic Policymaking and Cooperation between the WTO, the IMF and the World Bank*, WT/TF/COH/S/7 (Apr. 29, 2003), at ¶ 40.

through diverse means.

However, this on-going process would serve no purpose without domestic coordination at the inter-ministerial level. The formulation of coherent economic policies begins at home. The WTO's Declaration on Coherence specifically refers to this key issue stating, "[t]he task of achieving harmony between these policies falls primarily on governments at a national level, but their coherence internationally is an important and valuable element in increasing the effectiveness of these policies at a national level."<sup>41</sup> As Anne Krueger, the First Deputy Managing Director of the IMF, points out, "to think that governments can bypass in some way the crucial step—achieving consensus—and achieve coherence between the management of the international organisations is to create false expectations."<sup>42</sup>

Any viable project aimed at achieving global economic policymaking effectively begins with coordination at the domestic level. However, modern heads of ministries and agencies with competence in economic areas often tend to displace other branches of government from the scenario of developing that consensus. The tendency towards "self-containment" in modern domestic economic policy-making is reinforced and amplified on a global scale through the WTO, the IMF, and the World Bank. Consequently, the lower level of coordination between these institutions and non-economic international institutions is a mere global expression of the above mentioned domestic phenomenon.

Presently, domestic inter-ministerial disputes are conditioned and influenced by international institutions. Under this new scenario, ministries and agencies with competence in economic areas have increased significantly their domestic decision-making power vis-à-vis "non-economic" ministries and agencies. In this sense, global economic institutions provide for a second level playing field for domestic inter-ministerial politics. As a result, ministers of trade and finance solve a growing number of domestic disputes in their favour by recalling the rules and decision making procedures of those global economic institutions. Therefore, coordinating the functioning of these institutions can only increase their policy leverage.

## II. Agreements and Coordination of Jurisdictions

The Uruguay Round has provided an opportunity to consolidate the project of international economic coordination arising from Bretton

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41. Declaration on Consultation and Coherence, *supra* note 11.

42. ANNE O. KRUEGER, PROGRAM FOR THE STUDY OF INTERNATIONAL ORGANIZATIONS: ACHIEVING GREATER COHERENCE IN GLOBAL DECISION-MAKING 23-6, 28-9 (1998).

Woods. Agreements between the WTO and the IMF, as well as between the WTO and the World Bank, are the first response to the WTO's ministerial mandate to obtain, in cooperation with those institutions, greater coherence in economic policy-making on a global scale. The first sentence of both preambles states that these agreements establish new rules for coordination in response to "the growing interactions between economic policies pursued by individual countries arising from the globalization of markets."<sup>43</sup>

The WTO-IMF Agreement was signed at the beginning of the first Ministerial Conference of the WTO in Singapore. This agreement completes the traditional bilateral collaboration between these institutions and incorporates a series of emerging institutional practices dealing with issues such as information, communication, and research, in addition to legal and jurisdictional issues.<sup>44</sup> The WTO-IMF Agreement grants both institutions reciprocal observer status in specific bodies, formalizes communication channels, and promotes consultation and the exchange of information.<sup>45</sup> In this sense, it prescribes a series of obligations in respect to the relevance of IMF decisions in the functioning of the multilateral trade system.<sup>46</sup> Additionally, the WTO-IMF Agreement addresses the traditional role of the IMF within the framework of the Balance of Payments Committee, making permanent the provisional content of the December 1994 exchange of notes between the IMF and the President of the former Committee on Restrictions to Imports for Balance of Payments Purposes.<sup>47</sup> The text of the WTO-IMF agreement also contains provisions relating to the jurisdiction of the WTO dispute settlement mechanism.<sup>48</sup> The fact that IMF representatives perceived several potential overlapping and/or conflicts of jurisdiction led them to include the matter in negotiations. As a result, and following

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43. World Trade Organisation, *WTO Agreement with the Fund and the Bank: Annex I—Agreement between the International Monetary Fund and the World Trade Organisation*, WT/GC/W/43 (Nov. 4, 1996), at Preamble [hereinafter WTO-IMF Agreement]; see *Agreement Between the International Monetary Fund and the World Trade Organization*, Dec. 9, 1996, reprinted in *SELECTED DECISIONS AND SELECTED DOCUMENTS OF THE INTERNATIONAL MONETARY FUND* (Twenty-Ninth Issue, 2005); see also Declaration on Consultation and Coherence, *supra* note 11, at ¶ 1.

44. WTO-IMF Agreement, *supra* note 43, at Preamble.

45. See *id.*

46. Paragraph 3 of the agreement establishes that the IMF should be informed of several decisions in relation to both GATT and GATS: (a) restrictions on the making of payments or transfers for current international transactions; (b) measures approving discriminatory currency arrangements or multiple currency practices; and (c) measures decisions requesting a Fund member to exercise controls to prevent a large or sustained outflow of capital. *Id.* at ¶ 3.

47. *Id.* at ¶ 4.

48. *Id.* at ¶ 5.

a complex bargaining process, the agreement grants the IMF a presence, albeit limited, in the procedures of the dispute settlement mechanism.<sup>49</sup> The agreement therefore provides for the WTO to invite the IMF to send a member of its staff as an observer to its meetings “when questions of jurisdictional importance for the IMF are to be considered.”<sup>50</sup> The dispute settlement mechanism constitutes a useful type of tool for the efficacy of international law. Understandably, its institutional attributes are feared and respected by other international institutions that also apply substantive treaty law but have a less effective institutional design. In this scenario, however, the IMF, and to a lesser degree the World Bank, have been the only international institutions with the political leverage to obtain concessions in respect to the WTO dispute settlement procedures.<sup>51</sup> The authority attributed to the IMF for providing information on the compatibility of exchange measures adopted within the framework of the WTO (i.e., acceptance of IMF findings and determinations) includes the presentation of data and information for the settlement of disputes. For this purpose, a communication mechanism within the Dispute Settlement Body was incorporated in the agreement, stating, “[t]he Fund shall inform in writing the relevant WTO body (including dispute settlement panels) considering exchange measures within the Fund’s jurisdiction whether such measures are consistent with the Articles of Agreement of the Fund.”<sup>52</sup>

In an attached Comment, the Secretariat states that as a result of this provision, “the IMF is obliged to inform any WTO body which examines measures for change included in the IMF jurisdiction (including the special dispute settlement groups) whether those measures are compatible with the Articles of Agreement of the IMF.”<sup>53</sup> The Comment adds that communications are to be official in nature, which may imply their inclusion in the final reports of special groups.<sup>54</sup> Moreover, the agreement establishes that the WTO will invite the IMF to send a member of its staff to other meetings of the Dispute Settlement Body and other WTO organs, with the exception of “special dispute

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49. WTO-IMF Agreement, *supra* note 43, at ¶ 5.

50. *Id.* at ¶ 6.

51. The IMF had a special interest in respect to this mechanism in the negotiations; the text of the agreement even determines that the agenda of the Dispute Settlement Body shall be made available to the IMF. Paragraph 7 therefore establishes that the WTO will place at the disposal of the IMF its agendas “at the same time as they are distributed in the WTO,” just as the IMF will do with the agendas of the meetings of the Executive Board. *Id.* at ¶ 7.

52. *Id.* at ¶ 8.

53. The agreement attaches an annexe with comments agreed to by both organisations entitled *Comments on the Agreement between the IMF and the WTO*. See *id.* at ¶ 14.

54. WTO-IMF Agreement, *supra* note 43, at ¶ 14.

settlement groups.”<sup>55</sup> This “invitation” will be made by the WTO, prior to consultations with its Secretary and IMF staff, when it reaches the conclusion that IMF presence “would be of particular common interest for both organisations.”<sup>56</sup>

Finally, the agreement states that the Director General of the WTO and the Managing Director of the IMF “shall agree on appropriate procedures for collaboration [on] . . . exchanges of views on jurisdictional and policy issues”<sup>57</sup> for the purpose of ensuring cooperation between the two institutions.<sup>58</sup> Communication is generally encouraged between the bodies of both organisations: “Each organization may communicate its views in writing on matters of mutual interest to the other organization or any of its organs or bodies (excluding the WTO dispute settlement panels) and such views shall become part of the official record of such organs and bodies.”<sup>59</sup> The Comment recommends these communications should be exclusively “to communicate opinions on important questions of general policy and/or competence.”<sup>60</sup> Together with this formal mechanism, the WTO-IMF Agreement gives rise to an informal device that Secretaries should use to consult with each other in order to avoid, or at least reduce, any possible conflict or contradiction. Thus, the IMF staff and the WTO Secretariat will hold consultations on “issues of possible inconsistency between measures under discussion with a common member” and that member’s obligations under the WTO Agreement or the IMF’s Articles of Agreement.<sup>61</sup>

The WTO-World Bank Agreement maintains a structure and content that is similar to the WTO-IMF Agreement. It includes a mechanism for consultation and the exchange of information between the World Bank and the WTO on questions of common interest and provides for the role of observers in specific bodies. The WTO-World Bank Agreement also stipulates that the WTO Secretariat will be invited to meetings of the Executive Board dealing with “general and regional trade policy issues, including the formulation of World Bank policies on trade

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55. The term includes “special groups, arbitrators, and the Appellate Body . . . and any other bodies of restricted composition constituted for the settlement of disputes” as the comment on the agreement states. *Id.* at ¶ 6.

56. *Id.*

57. *Id.* at ¶ 8.

58. *Id.*

59. WTO-IMF Agreement, *supra* note 43, at ¶ 8.

60. *Id.* at Comment to ¶ 8.

61. The Comment also makes mention of the fact that the feedback provided by these consultations “would not constitute an authoritative statement of the views of the organisation and thus would not be binding.” *Id.*

matters.”<sup>62</sup> At the same time, the President of the World Bank shall recommend that the WTO Secretariat be invited to send an observer when the consultations conclude that a particular meeting of the Executive Directors will be examining “questions of special common interest to both organisations.”<sup>63</sup> Furthermore, the WTO-World Bank Agreement adds that the WTO, in turn, will invite the World Bank to send an observer to meetings of its bodies when the WTO and the World Bank deem that these meetings will be examining “particular matters of common interest to both organisations[,]”<sup>64</sup> with the exclusion of the Dispute Settlement Body, special groups and the Appellate Body.<sup>65</sup>

Notwithstanding these agreements, the relations and the distribution of jurisdiction between these institutions still pose complex questions. For example, *India—Agricultural Products* is a clear case revealing the inner legal frictions of the relationship between the IMF and the WTO.<sup>66</sup> One of the central issues to this case was the degree of deference that the special groups should give to the information provided by the IMF on the purpose of complying with the obligation of “objective assessment” of the matter.<sup>67</sup>

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62. World Trade Organisation, *WTO Agreement with the Fund and the Bank: Annex II—Agreement between the International Monetary Fund and the World Trade Organisation*, WT/GC/W/43 (Nov. 4, 1996), at ¶ 4 [hereinafter WTO-World Bank Agreement].

63. *Id.*

64. *Id.* at ¶ 5.

65. *Id.*

66. The dispute originated in 1999 as a U.S. claim against India for infringing upon Articles XI.1 and XVIII.11 of the GATT, which imposed quantitative restrictions on agricultural, textile, and industrial products. In its defence, India alleged that the measures adopted were applied to maintain its balance of payments under Article XVIII.B of the GATT. *Id.* The decision of the special group and that of the Appellate Body maintained, with different arguments, that the restrictions were not compatible with WTO law. See Report of the Special Group, *supra* note 26; see also Appellate Body Report, *supra* note 26.

67. Article 11 of the Dispute Settlement Understanding states that every special group should carry out “an objective assessment of the matter before it, including an objective assessment of the facts of the case.” Understanding the Rules and Procedures Governing the Settlement of Disputes, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organisation, Annex 2, Legal Instruments—Results of the Uruguay Round, 33 I.L.M. 1125 (1994), at Article 11 [hereinafter DSU]. Following India’s allegations, it is addressed whether special groups should accept the determination of questions regarding of balance of payments made by the IMF pursuant to Article XV.2 of the GATT (“What constitutes a serious decline in the contracting party’s monetary reserves.” GATT, *supra* note 13, at art. XV.2.). The Special Group processed the detailed arguments of the parties in respect of the obligation (1) to consult the IMF and (2) to consider as conclusive the various IMF determinations pursuant to Article XV.2 of GATT. Nevertheless, the Special Group maintained that there was no need to make a decision on the issue, stating

[W]e accept in the circumstances of this case certain assessments of the IMF.

In this regard, however, we note that whether or not the provisions of Article

The Appellate Body dealt with the question by recalling that Article XV.2 of the GATT “requires panels, and not just the BOP [Balance of Payments] Committee and the General Council, to accept the findings and determinations of the IMF on the subjects specified in that provision.”<sup>68</sup> The Appellate Body concluded that the Special Group had fulfilled its obligation given that the Special Group did not limit itself to accepting the opinions of the IMF but “critically assessed these views and also considered other data and opinions in reaching its conclusions.”<sup>69</sup> Later, the Appellate Body opted to abstain from taking a legal position as this finding was not object of appeal.<sup>70</sup> The Appellate Body thus distanced itself from granting a “direct effect” to the decisions of the IMF within dispute settlement procedures and, therefore, within WTO law.<sup>71</sup> Nevertheless, it adopted a final solution in accordance with the IMF determinations.<sup>72</sup> In this sense, what the Appellate Body says and does not say reveals that questions of jurisdictional competence between both institutions are not fully settled. Therefore, the effects and the reach of references to the IMF in WTO law are approached with political caution.<sup>73</sup>

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XV:2 extend to panels, the Panel has the responsibility of making an objective assessment of the facts of the case and the conformity with GATT 1994, as incorporated into the WTO Agreement.

See Report of the Special Group, *supra* note 26, at ¶ 5.13; see also Appellate Body Report, *supra* note 26; see Siegel, *supra* note 12, at 576-84 (commenting on the case).

68. Appellate Body Report, *supra* note 26, at ¶ 77.

69. *Id.* at ¶ 149.

70. *Id.* at ¶ 152.

71. The possibility of deviating from the provisions attributing relevance to the IMF determinations in cases of balance of payments is always open. Special groups and the Appellate Body may feel strongly pressured by WTO Members in relation to their assessments on the IMF determinations. See DANIEL K. TARULLO, *The Relationship of WTO Obligations to Other International Agreements*, in NEW DIRECTIONS IN INTERNATIONAL ECONOMIC LAW—ESSAYS IN HONOUR OF JOHN H. JACKSON 168-71 (M. Bronckers & R. Quick eds., 2000). The IMF has in the past made various interpretations of the concept “restrictions” in its constitutive treaty taking into consideration that some are under the jurisdiction of GATT. See Gold, *supra* note 10, at 415.

72. Frieder Roessler, former Director of Legal Affairs at the GATT from 1989-1995, emphasizes that the IMF cannot be effective in the function attributed to it in Article XV, regarding exchange arrangements, in the current system of flexible exchange rates. See Roessler, *supra* note 20, at 157-79. The main objective of the IMF was to attain stability and convertibility of currencies. See *id.* Today, however, the convertibility is generalised and the exchange rates are not fixed. See *id.* As a result, the provisions of balance of payments, which were part of the monetary system designed to prevent competitive devaluations, are currently employed as “legal coverage” in order to use trade restrictions as substitutes for devaluations. See *id.* Consequently, these provisions have not been applied in an adequate manner since the collapse of the parity system. See *id.* Thus, the Committee on Balance of Payments has not once decided that import controls were unjustified for reasons of balance of payments given that there are no agreed criteria for taking a decision on this basis. See Roessler, *supra* note 20, at 157-79.

73. For reflections on the compulsory or non-compulsory nature of the IMF

There is no neutral jurisdictional forum or procedure to solve conflicts between WTO and the IMF, but several references and causes of conflict exist without an available external mechanism to adjudicate them.<sup>74</sup> In this respect, the coordination structure set up by the IMF, the World Bank, and the WTO shows that relations between international institutions cannot be governed in practice by means of applying rules of conflict in public international law. This mechanism of coordination erects an effective means of informally settling controversial legal issues, thus reducing the likelihood of possible conflicts through socialisation. However, the risk of antinomy in itself is inevitable.<sup>75</sup> The existence of coordinated structures can not fully remove the prospect of conflict, whether these are conflicts of treaties or conflicts of jurisdiction.

International institutions implement the rules contained in the treaties they administer as well as subsequent rules adopted under their decision making procedures. However, as the practice of international law reflects, these rules can be incompatible with other treaties. Therefore, several types of conflict may arise: (1) horizontal conflicts between the rules for these treaties ( $A-B$ ); (2) horizontal conflicts between acts and measures deriving from the treaties administered by these institutions ( $a-b$ ); and (3) conflicts between a treaty administered by one institution and acts and measures deriving from the treaty of another ( $A-b$  or  $a-B$ ).<sup>76</sup> Consequently, since there are no specific procedures for solving antinomies and conflicts, inter-institutional coordination through communication, dialogue, and diplomacy is called to be an essential function to supplement the practices of these institutions.

Mechanisms of coordination between international institutions cannot prevent conflicts from arising; however, they can inhibit or mitigate them. These mechanisms create frameworks of socialisation that restrain or reduce legal frictions and facilitate a consensual solution to antinomies and conflicts between institutions. In essence, the main challenge lies in those complex issues which, although they are the jurisdictional competence of a particular international institution,

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determinations in the procedures of the dispute settlement mechanism, see Martha Rutsel Silvestre, *Presumptions and Burden of Proof in World Trade Law*, 14 J. INT'L ARB. 67, 71-4 (1997).

74. *Gold*, *supra* note 10, at 415.

75. With respect to questions of jurisdiction between IMF and GATT in the field of trade restrictions based on balance of payments considerations, see *Gold*, *supra* note 10 at 354-9, 425-31, 451-81.

76. For an interesting case in which the interaction between adjustment programs and WTO law is discussed, see Appellate Body Report, *Argentina-Measures Affecting Imports of Footwear, Textiles, Apparel and Other Items*, WT/DS56/AB/R (Mar. 27, 1998); see also Siegel, *supra* note 12, at 572-6 (commenting on this case).



nevertheless remain in *grey areas*, or areas of concurring jurisdiction with other institutions. Even so, the management of global public affairs through law is faced with a growing complexity that will inevitably increase the overlapping of jurisdictions. In this sense, we live in a world of interdependent jurisdictions both on an interstate scale and between global institutions. Therefore, the perimeter of exclusive competences should be reduced in favour of schemes in which the primary responsibility of each international institution is complemented by secondary responsibilities of others: a system of shared competences. At the same time, the present political scenario is one of common interests, overlapping mandates, and complementary functions. In this sense, modern global policymaking clearly is characterized by entwinement.

As a result, the superposition and complementary character of mandates, competences, and functions between these institutions inevitably encourages coordination of their jurisdictions. International capital movements are a clear example of concurrence and jurisdictional allocations and reallocations in the economic field. Capital account convertibility interested both the IMF and the WTO following the debacle of the OECD Multilateral Agreement on Investment Agreement in 1998.<sup>77</sup> However, the shared interest in this field should be tackled with care since there are points of jurisdictional overlap between both institutions.<sup>78</sup> The same applies to the link between liberalisation of

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77. In 1997, the Interim Committee of the Board of Governors on the International Monetary System recommended an amendment to the Articles of the Agreement to include within its competence the liberalisation of capital movements. The Asian crisis led to a suspension of the project because it demonstrated the link between the liberalisation of the capital account and the rise in vulnerability of national economies. Technically, for the purpose of granting jurisdiction to the IMF in matters of liberalisation of capital account, it would be required to eliminate Article VI, Section 3, on the control of capital transfers and, to amend Article VIII on general obligations of members. For two studies of special interest crafted from the experience of the legal department of the IMF, see JOSEPH GOLD, *INTERNATIONAL CAPITAL MOVEMENTS UNDER THE LAW OF THE INTERNATIONAL MONETARY FUND* (IMF Pamphlet Series No. 21, Washington D.C) (1977) and François Gianviti, *The IMF and the Liberalization of Capital Markets*, 19 HOUS. J. INT'L L., 733, 773-83 (1997); see also, Cynthia Crawford Lichtenstein, *International Jurisdiction over International Capital Flows and the Role of the IMF: Plus ça Change*, in *INTERNATIONAL MONETARY LAW: ISSUES FOR THE NEW MILLENNIUM* 61-80 (Mario Giovanoli ed., 2000). On the pros and cons of the IMF assumption of jurisdiction in matters of liberalisation of capital account, see Gilbert Irwin, Christopher L. Gilbert, & David Vines, *How Should the IMF View Capital Controls?*, in *THE IMF AND ITS CRITICS: REFORM OF THE GLOBAL FINANCIAL ARCHITECTURE* 181-206 (David Vines & Christopher L. Gilbert eds., 2004).

78. Note that Trade-Related Investment Measures (TRIMS), GATS, and GATT have points of connection with capital movements. During the Doha Round negotiations, some developing countries maintained a position favouring the use of trade restrictions for reasons of balance of payments in cases of crisis of capital accounts. The IMF

trade in financial services and capital account liberalisation. The Doha negotiations on market access in financial services and the GATS rules also clearly connect with IMF activities such as policy advice and the promotion of financial stability.<sup>79</sup> Additionally, relations between trade and exchange rate stability require the IMF and the WTO to take a careful approach in cases such as devaluation measures deriving from IMF programs, which may negatively affect trade transactions from third parties.<sup>80</sup>

### III. Promoting a Process of Regulatory Convergence

The coordination structure of the IMF, the World Bank, and the WTO also promotes state regulatory convergence in several policy areas, in addition to facilitating arrangements concerning jurisdiction. Their coordinated public policies aim at opening markets and preserving market openness. A major feature of the construction of the global political economy is the development and management of linkages

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intervened in response to consultation with the WTO and maintained that these measures could only be used in "extreme" situations of current account crisis and should take the form of a temporary uniform tariff on all imports. See World Trade Organisation, Note on Issues Raised by Developing Countries in the Doha Round, Communication from the International Monetary Fund, *Trade Restrictions for Balance of Payments Purposes*, WT/TF/COH/13 (Feb. 14, 2003). The participation of domestic economies in the international capital markets distorts this tool and affects the assumptions of GATT rules and procedures on balance of payments, since it increases the influence of the capital account on the situation of balance of payments (e.g., the Asian financial crises). In this respect, trade restrictions are not adequate tools for addressing and correcting balance of payments deficits resulting from incidents and events relating to capital account. On these questions and the assessment of the sufficiency of monetary reserves, see World Trade Organisation, Note by the Secretariat, *The Treatment of "Monetary Reserves" in WTO Balance of Payments Committee Consultations*, WT/TF/COH/S/2 (June 18, 1999).

79. The GATS and its Schedules of Commitments clearly reveals this interaction. Thus, for example, the prudential clause in the GATS Annex on Financial Services, which allows Member States to adopt restrictive measures on financial services with the object of safeguarding the integrity of their financial systems, concurs and interacts with IMF policies of strengthening the financial sector and international financial stability, as well as its monitoring activities and technical assistance on practices of supervision and prudential rules.

80. Exchange rates stability is critical for international trade. Overcoming financial crises at the end of the nineties was dealt with by important devaluations, which resulted from IMF programs, although some WTO Members considered the devaluations "unfair trade." This is an issue on which both institutions must work and discuss. For a clear explanation of the resulting situation of the intervention of Korea in the meeting of the General Council on Coherence in 2003, see General Council on Coherence in *Coherence in Global Economic Policymaking: Minutes of the Meeting*, WT/GC/M/79 (June 25, 2003), at ¶ 74-81. During the Uruguay Round, the GATT Contracting Parties requested a report from the IMF on the effects of volatile exchange rates in international trade, but did not negotiate any instrument in this respect. See International Monetary Fund, *Exchange Rate Volatility, and World Trade—Occasional Paper*, 28 (1984).

among related regulatory regimes.<sup>81</sup> The master value underlying this process is economic liberalisation. In the specific case of the three international economic institutions, regulatory convergence is promoted through the combined techniques of *market access* through the WTO and *access to finance* through the IMF and the World Bank.

Access to markets and finance are the main regulatory tools administered by WTO, the IMF, and the World Bank. On one hand, the WTO regulates state behaviour through the market. The market is expanded through a multilateral forum of permanent trade negotiations and is regulated by a broad range of legal rules which are adjudicated by a dispute settlement system authorizing trade sanctions. Thus, the instruments administering multilateral market access constitute an efficient tool that gives direction to domestic public policies. Therefore, market access complements the regulatory tools of the IMF and the World Bank. For their part, the IMF and the World Bank regulate state behaviour through access to finance, a regulatory tool that is based on programs of financial assistance that incorporate several types of conditionality.<sup>82</sup> In the same way, the content of these programs gives direction to domestic public policies of borrowing countries.<sup>83</sup>

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81. See Picciotto, *supra* note 1, at 731.

82. The tool of conditionality is the IMF's own creation and has an imprecise legal basis in its Articles of Agreement.

The Fund shall adopt policies on the use of its general resources, including policies on stand-by or similar arrangements, and may adopt special policies for special balance of payments problems, that will assist members to solve their balance of payments problems in a manner consistent with the provisions of this Agreement and that will establish adequate safeguards for the temporary use of the general resources of the Fund.

IMF, *supra* note 5, at art. V.3 ¶ a.

The first instrument regulating the principles which govern the use of resources is a May 1979 Decision on the Guidelines on Conditionality adopted by the Executive Directory. For an academic monograph on IMF conditionality from an international legal perspective, see ERIK DENTERS, *LAW AND POLICY OF IMF CONDITIONALITY* (1996). For a critical research from the G24 analysis program, see Ariel Buira, *An Analysis of IMF Conditionality*, in *CHALLENGES TO THE WORLD BANK AND IMF: DEVELOPING COUNTRIES PERSPECTIVES* (Ariel Buira ed., 2003).

83. The IMF has various services providing access to funding which uses conditionality. The traditional Structural Adjustment Facility and the Extended Fund Facility IMF services (SAF-EFF 1974) for balance of payments dysfunctions therefore coexist with other new vehicles for access to funding, which the IMF has devised and reformed: (1) Poverty Reduction and Growth Facility (PRGF 1999), which replaces the Enhanced Structural Adjustment Facility (ESAF 1987); (2) the Emergency Aid Mechanism (1995); Supplementary Reserve Facility (SRF 1997); and the Compensatory Financing Facility (CFF 1963). All these services, except the PRGF and the Emergency Aid Mechanism, operate through non-concessionary loans with rate of charge set at market price. For an overview, see International Monetary Fund, Policy Development and Review Department, *Review of Fund Facilities—Preliminary Considerations* (Mar. 2, 2000). For the decisions of the Executive Board on the reform of non-concessionary

These two regulatory tools converge through inter-institutional coordination. Since they increase pressure on domestic policies through their combined positive and negative incentives, they generate a reinforced effectiveness. The programs of the World Bank and the IMF impose obligations by granting or denying financial assistance; WTO law imposes obligations by granting or denying access to the market. From a technical perspective, the two regulatory tools use provisions of a different flexibility. Thus, the tools of the IMF and the World Bank employ rules derived from treaty-based programs where compliance is promoted by refusal or suspension of financial aid. Conversely, the WTO employs treaty rules where compliance is promoted by both trade concessions and suspension of trade concessions. Consequently, the aggregate efficacy of the law of these institutions benefits from two systems of incentives which are increasingly coordinated.

Their combined rules provide “muscle” to global liberalisation. In this way, their obligations are based on treaty-based programs and these treaty rules create a “legal circuit,” encouraging a global process of state regulatory convergence based on market openness.<sup>84</sup> However, it is important to note that, in relation to the functioning of this circuit, these institutions are required to avoid formal cross-conditionality.<sup>85</sup> Thus, both the IMF and the Bank have not only restructured their conditionality but, as explained below, now also are focusing on the promotion of autonomous liberalisation measures.

The measure of global public power held by the three organisations within the global institutional architecture cannot be increased by their present coordination structures. The relations between the institutions composing this triad take varied routes. The diverse intensities in the bilateral relations between the three organisations are different for historical and cultural motives, as well as for reasons of functionality and opportunity. Therefore, the IMF-World Bank relationship has been more dynamic and intense, not only for historical reasons, but for practical reasons. In this sense, developed countries have more autonomy and margins of discretionary power within the structures of these two sister

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services, *see* International Monetary Fund, Legal, Policy Development and Review, *Review of Fund Facilities—Decisions and Treasurers Departments* (Nov. 28, 2000).

84. This circuit indirectly feeds back the acceptance of new obligations, the negotiation of new norms, and the signing of treaties. Requirements of cross GATT-IMF and World Bank-IMF membership are themselves structural elements of this circuit. The World Bank and the IMF are sister institutions that were designed to work jointly and in a complementary manner. Thus, the World Bank’s membership is dependent on the membership of the IMF. IMF, *supra* note 5, at art. VI.3. In the same way, WTO Members are required to be Members of the IMF or, failing this, to conclude a special exchange agreement. GATT, *supra* note 13, at art. XV.6.

85. Declaration on Consultation and Coherence, *supra* note 11, at ¶ 5.

institutions through the structure of voting rights than in the collective decision-making structures of the WTO, which are based on the consensus rule.<sup>86</sup> This type of environment, best suited for powerful minorities, also is present in forums such as G7/8 and connected or related groups and clubs,<sup>87</sup> while parallel to it are a series of global regulatory agencies assist the process of regulatory convergence.<sup>88</sup> Resulting from this scenario, these three “combined regimes” manage an intensive multi-state legal transplant of predefined economic models, rules, and institutions under the coordinated implementation of their functional competences on macroeconomic and financial stability, trade promotion, and development.

The bilateral coordination of the multilateral trading system with the IMF and the World Bank, known as the Coherence Mandate, has increased considerably since the Uruguay Round. At the same time, the traditional bilateral coordination between the IMF and the World Bank has been strengthened significantly and has intensified in recent years.<sup>89</sup> This strategy of intensifying bilateral coordination between the sister institutions began when the IMF Managing Director and the World Bank President agreed to reform their collaboration procedures and practices in 1998.<sup>90</sup> At that time, the IMF and the World Bank concentrated their

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86. The exercise of power inside the IMF, for example, shows that the central political weight is exercised by the United States and is followed at a distance by a group of European States attached to a weak coordination mechanism both within and outside this institution (external relations of the Economic and Monetary Union). For a full analysis of the distribution of competences between the European Union and the Euro Zone countries and its coordination inside the international monetary system, see MANUEL LOPEZ ESCUDERO, *EL EURO EN EL SISTEMA MONETARIO INTERNACIONAL* (2004).

87. See International Monetary Fund, *A Fact Sheet: A Guide to Committees, Groups, and Clubs* (Aug. 27, 2004).

88. The Basel Committee on Banking Supervision, the International Organization of Securities Commissions (IOSCO), the International Association of Insurance Supervisors (IAIS), the International Accounting Standards Board (IASB), the International Federation of Accountants (IFAC), and the Financial Stability forum are among the most influential agencies. The Financial Stability forum is a good example of the type of inter-institutional artefacts resulting from collective interaction and partnerships between international regulatory institutions and agencies. See George Walker, *A New International Architecture and the Financial Stability Forum*, in *THE REFORM OF THE INTERNATIONAL FINANCIAL ARCHITECTURE* 119-53 (Rosa M. Lastra ed., 2001). Paul Stephan coined the term “new international law” to refer to a legal and regulatory phenomenon which transcends what is traditionally considered to be public international law and extends to a diverse group of international agencies that produce regulation. See Paul B. Stephan, *The New International Law—Legitimacy, Accountability, Authority, and Freedom in the New Global Order*, 70 U. COLO. L. REV. 1555, 1555-87 (1999).

89. For an overview of the areas where collaboration between the Bank and the IMF has intensified, see International Monetary Fund, *Strengthening IMF-World Bank Collaboration on Country Programs and Conditionality—Progress Report* (Aug. 19, 2002).

90. International Monetary Fund, *Report of the Managing Director and the*

efforts on delimiting primary responsibilities.<sup>91</sup> As a result, both financial institutions have been involved in a joint process of program design, aimed at rationalizing the content and formulation of conditionality.<sup>92</sup> In recent years, this process has produced an ordered division and distribution of conditions focused on avoiding duplication or overlapping,<sup>93</sup> as well as *formal* cross-conditionality.<sup>94</sup>

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*President on Bank-Fund Collaboration* (Joint Guidelines), SM/98/226 (Sept. 4, 1998). This document led to a joint report on the reinforcement of the framework of coordination in their country policies and procedures. See also International Monetary Fund, *Strengthening IMF-World Bank Collaboration on Country Programs and Conditionality*, SM/01/219 (Aug. 23, 2001).

91. This demarcation determines the World Bank's central focus as providing assistance to countries to reduce poverty, concentrate on the structural and social agenda, including the public and financial sector, and address the institutional and environmental dimensions of development. The IMF is responsible for macroeconomic stabilisation, monetary, fiscal and exchange rates policies, in addition to related structural and institutional measures and issues relating to the functioning of domestic and international financial markets. International Monetary Fund, *Report of the Managing Director and the President on Bank-Fund Collaboration* (Joint Guidelines), SM/98/226 (Sept. 4, 1998).

92. Several IMF self-attributed competences are being questioned in the legal literature on the field. For example, Eva Riesenhuber maintains there was an absence of legal basis for IMF actions in handling the Asian crises, when it provided funds to restore confidence in the markets, as well as using conditionality to carry out structural reforms in areas not having a direct impact on the balance of payments. Furthermore, in her opinion, these actions should be considered ultra vires in the light of IMF's Articles of Agreement and international law. EVA RIESENHUBER, *THE INTERNATIONAL MONETARY FUND UNDER CONSTRAINT: LEGITIMACY OF ITS CRISIS MANAGEMENT* 350, 402 (2001).

93. Practice reveals a degree of duplication of conditions in the IMF and World Bank programs when both institutions consider a particular measure to be critical for their effectiveness. In these cases, the sister institutions attempt to harmonise their conditionality. International Monetary Fund, *Strengthening IMF-World Bank Collaboration on Country Programs and Conditionality—Progress Report*, ¶ 10 (Aug. 19, 2002).

94. The term "cross-conditionality" refers to the duplication and linkage between the conditions of two organisations. Its use originated in the relationship between the two financial institutions, although it now also is applied to their relationship with the WTO. Declaration on Consultation and Coherence, *supra* note 11, at ¶ 5. With respect to bilateral World Bank-IMF relations, each organisation currently disassociates the decisions it adopts within the framework of its programs from compliance with conditions of the other financial institution. The bodies of each institution function in an independent manner, applying the provisions of their constitutive treaty and complementary rules and regulations. Nevertheless, practice shows that inter-institutional coordination enables similar effects to be produced by reaching consensus on objectives and organising a division of labour. In this respect, it is possible to speak of *measures of equivalent effect* to cross-conditionality. Inter-institutional communication and dialogue encourages informal coordination and convergence and, therefore, transcends the formal technical question of cross-conditionality. Official discourse may, as a result, maintain that both institutions operate autonomously and independently. Those tools promoting consultations, contacts, cross-communication between these organisations and policy advice contribute to this result. The term "informal cross-conditionality" is used to refer to this phenomenon on occasion. Nicholas Kremmydas

The existence of diverse fields of jurisdictional interaction between the IMF and the World Bank drove them to establish, as a principle of their relationship, the maintenance of conditionality in those domestic reforms that each organisation deemed critical for the success of their programs.<sup>95</sup> Thus, the 2002 revised version of the IMF Guidelines on Design and Implementation of Conditionality starts to rationalise conditions and concentrates efforts on avoiding overlapping.<sup>96</sup> Duplication of conditions is mitigated by the collaborative demarcation between “critical areas” and “non-critical areas.” As a result, there has been a considerable average reduction in the conditions of IMF loans. However, conditions removed from its programs are often assumed by the World Bank. Therefore, coordination facilitates the phenomenon of transplanting conditions. Both institutions have also designed a Note on the Guidelines addressing the improvement and increase of coordination.<sup>97</sup> This instrument creates a basic framework for policy coordination on country programs, based on three main strategies: (1) the division of work and staff operations in the field (country programs) based on the principle of “lead agency;” (2) the strengthening of cross-communication on the priorities for reform, conditionality, and implementation of programs; and (3) the promotion of early and systematic collaboration aimed at resolving any possible difficulties in the first stages of the process of drafting country policies.

In this respect, therefore, the principle of “lead agency” is instrumental to the prevention of conflicts of competence and to the coordination of both institutions on specific policy areas. In fact, it

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maintains, for example, that informal cross-conditionality is the rule rather than the exception. Nicholas Kremmydas, *The Cross-Conditionality Phenomenon—Some Legal Aspects*, in *FESTSCHRIFT IN HONOR OF SIR JOSEPH GOLD* 197-8, 218 (Werner F. Ebke & Joseph J. Norton eds., 1990).

95. International Monetary Fund, *Strengthening IMF-World Bank Collaboration on Country Programs and Conditionality*, SM/01/219 (Aug. 23, 2001).

96. In an effort to improve effectiveness of the programs, the Guidelines were revised for the second time in 2002. This second revision, led by Horst Köhler, was authorised and approved by the Executive Board in 2000. The Guidelines concentrate on the macroeconomic objectives of the IMF and, in turn, outline competences with the World Bank. They aspire to increase effectiveness, clarify provisions, and adapt conditions to the circumstances and capabilities of each country and coordinating with other institutions. See International Monetary Fund, Legal and Policy Development and Review Departments, *Guidelines on Conditionality* (Sept. 25, 2002). From a legal perspective, the Guidelines are a mere instrument of *soft law* produced by the Executive Board to “interpret” the meaning of “adequate safeguards” in the Purposes portion of the IMF Agreement (“To give confidence to members by making the general resources of the Fund temporarily available to them under adequate safeguards.” IMF, *supra* note 5, at art. I.5.). See Gold, *supra* note 10, at 352.

97. See International Monetary Fund, Staff Guidance Note, *Operationalizing Bank-Fund Collaboration in Country Programs and Conditionality* (April 2002).

allocates the exercise of competence for a given policy area in accordance with the institutional expertise of each organisation. The idea of “lead agency” may resolve, in a decentralised way, many minor questions of jurisdictional competence when implementing their policies in a given country. In this sense, the lead agency handles dialogue with the government on substantive questions and gives policy advice to the other institution on the design and policy content of conditionality. In practice, this situation can produce some type of informal institutional hierarchy between both institutions with respect to specific policy areas in a given country. Logically, the precise determination of the “lead agency” is less clear in some areas such as budgetary management reform, and reform of the financial sector. Therefore, defining jurisdictional competence through the principle of “lead agency” requires precise rules and procedures to avoid its determination from becoming the product of mere rotation or power balances.

Another relevant example of economic coordination is the joint explorations by the IMF, the World Bank, and the WTO with respect to “autonomous liberalisation measures.” These measures are state measures of trade liberalisation adopted either voluntarily or with a stimulus, such as financial assistance from the IMF or the World Bank. These measures do not produce consolidated concessions and commitments in the WTO. Thus, autonomous liberalisation adopted under IMF or the World Bank programs may technically be withdrawn by a country once its government is no longer subject to the pressure of refusal or suspension of a loan. Thus, formulas and procedures are being explored by these institutions and the WTO in order to grant “credits” in multilateral trade negotiations to autonomous liberalisation measures; in other words, creating a “market” in which these credits may be exchanged for trade concessions in WTO negotiations. The liberalisation agenda of the three institutions therefore converge in a particular imaginative mechanism that allows countries to obtain market access in exchange for consolidating autonomous liberalisation measures.<sup>98</sup>

The transformation of these measures into consolidated commitments thus would transform an additional sequence of trade liberalisation into binding international law. As a result, this regulatory chain would end up producing hard-law.<sup>99</sup> Consequently, the

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98. The design of mechanisms for obtaining credit and/or recognition of negotiations has long been a matter for discussion. In this respect, a distinction was made between the concept of *credit* (linked to the consolidation of tariffs) and *recognition* (based on autonomous trade liberalisation initiatives). World Trade Organisation, Note by the Secretariat, *Autonomous liberalisation of Trade*, MTN.TNC/11/Rev.1 and WT/TF/COH/S/1 (June 18, 1999).

99. Under this scheme, the promotion of autonomous trade liberalisation measures



autonomous liberalisation measure would be transformed into a trade concession, subject to the general WTO disciplines, and, therefore, to the common regime of exceptions, safeguards, and escape clauses of WTO law. For the present, methods have been adopted for dealing with autonomous liberalisation in services.<sup>100</sup> Countries adopting these types of measures can negotiate a credit with other trade representatives, prior to consolidating them on their lists of GATS commitments. For each round of negotiations, the Council for Trade in Services will establish guidelines for negotiations on the liberalisation of services and, within these guidelines, the Council will determine ways of dealing with autonomous liberalisation measures adopted from previous negotiations. It is not possible to speculate on whether or not this new regulatory development will be successful or if a suitable formula for trade in goods could be developed in the future. Nevertheless, this paradoxical idea of using market tools to legally formalize global liberalization is the clear expression of a particular type of market-driven thinking.

Interestingly, the exercise of soft-power by these institutions recently has been directed at the promotion of international trade lawmaking through IMF lending. The WTO Members, its Secretariat, as well as the IMF and the World Bank, are fully aware of the risks of a second failure following the demise of the Millennium Round in 1999. There is much at stake in the Doha Round because the specialised legal system of the WTO is required to be relatively dynamic in order to be effective.<sup>101</sup> It is for this reason, in fact, that Article III.2 of the WTO agreement defines the multilateral trade system as a permanent forum of negotiations. Therefore, the process of trade liberalisation encouraged by the WTO, the IMF, and the World Bank is dependent on regular multilateral lawmaking. As a result, the Executive Directors of the IMF,

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by IMF and World Bank programs essentially function in the following manner: (1) the IMF or the World Bank grants Country *X* a loan conditioned to the adoption of specific autonomous liberalisation measures; (2) Country *X* adopts those temporary measures to obtain resources; and (3) WTO grants Country *X* a "negotiation credit" in relation to those measures to obtain concessions and improve market access at WTO negotiating table. In essence, this institutional scheme could make it possible to close the circle and displace a temporary autonomous liberalisation measure, promoted by IMF or the World Bank, to a consolidated WTO commitment, subject to the disciplines of WTO law.

100. World Trade Organisation, Special Session for the Council of Trade in Services, *Modalities for the Treatment of Autonomous Liberalisation*, TN/S/6 (Mar. 10, 2003).

101. The urge faced by the WTO is explained with clarity by what is known as the "bicycle theory" in international trade. The theory essentially suggests that WTO is inevitably forced to manage a continuous process of multilateral liberalisation. In other words, in order not to fall off, there has to be constant pedalling. For more on the bicycle theory, see generally C. FRED BERGSTEN, TOWARD A NEW INTERNATIONAL ECONOMIC ORDER: SELECTED PAPERS OF C. FRED BERGSTEN 1972-1974 209-24 (1975); see also JOSEPH BHAGWATI, PROTECTIONISM 40-2 (1988).

together with the WTO Secretariat, have devised an innovative tool to promote consensus in the Doha Round: the Trade Integration Mechanism.<sup>102</sup> This mechanism promotes the development of new trade rules by providing financial assistance to cover some specific short-term adverse effects that these rules could cause developing countries.<sup>103</sup> Under this instrument, IMF financial assistance is granted through an agreement with the borrowing country or through a program already in operation. In IMF terminology, the aim is to ensure that the risk of any negative short term effect on the balance of payments will not dissuade developing countries from committing to the liberalisation of international trade. In this sense, the IMF designed this mechanism as an anticipatory tool seeking to facilitate adjustment.

The prospective economic analysis of the IMF, the World Bank, and WTO anticipates that the expected aggregated benefits of Doha do not exclude adjustment costs in developing countries. The instrument covers the adverse effects of liberalisation in third countries on developing countries. It is assumed that new rules could generate a negative short term effect on third party balance of payments as a result of, for example, the increase in competition in the textile sector, the erosion of preferential market access for specific products such as textiles products and sugar, or reforms on agricultural subsidies. Therefore, qualifying to obtain funds is dependent on the adverse impact from increases in market access by other countries (e.g., preferential access) or from other countries withdrawing trade subsidies (e.g., negative effects of the withdrawal of export subsidies in Country A on Country B which imports those products). Although the IMF has presented this mechanism as a “safeguard” and an “insurance policy,” it is, in practice, a mere loan covering short-term adverse effects of liberalization by third

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102. International Monetary Fund, Policy Development and Review Department, *Fund Support for Trade-Related Balance of Payments Adjustments* (Feb. 27, 2004). This new “policy,” as described by the IMF, has precedent in the Compensatory Financing Facility. The IMF created this tool to assist countries that felt affected by the shocks and global fluctuations of basic product prices (temporary reductions in exports), which result partly from deficiencies in the multilateral trade system. The mechanism has been rarely used and has been reformed on several occasions to include other functions. See International Monetary Fund, Policy Development and Review Department, *Review of the Compensatory Financing Facility* (Feb. 18, 2004).

103. It is interesting to note that the General Council of the WTO still resists granting observer status in the Trade Negotiations Committee and its subsidiary bodies. This status has been requested on various occasions throughout the Doha process and has even implicated in its favour, yet without success, the Director General of the WTO. These are his words before the General Council in relation to the issue: “At a time when the WTO [is] looking for assistance from these institutions, it [is] important that the WTO implement its part of the cooperation agreement fully and so help them to help the WTO.” World Trade Organisation, *Coherence in Global Economic Policymaking—Minutes of the Meeting*, WT/GC/M/79 (June 25, 2003).

countries.<sup>104</sup> This mechanism has its detractors and it is not possible to predict whether it will be used or not. However, irrespective of its success or failure, it has a special interest as a policy tool by linking financial assistance with advances in international economic lawmaking.<sup>105</sup>

Finally, the coordination between these economic institutions also is promoted through the collaborative production and dissemination of ideas. In this sense, the convergence towards market openness is supported by policy advice, technical assistance, and capacity building strategies based on developing pro-liberalization research. These institutions allocate significant human and material resources to the development of a common “scientific” discourse that has a bearing on both domestic and global policymaking. In this respect, there is an imbalance of resources in favour of the World Bank and the IMF, in comparison to other international institutions, when it comes to exercising “voice.” Research programs, technical assistance, and policy advice and assessment are some of the means to pursue this goal. This fact is important since both functions of analysis and dissemination of ideas help to build consensus between and within governments in many occasions.<sup>106</sup>

In essence, the production and dissemination of ideas by these institutions facilitates the reform of domestic institutions, laws, and regulation. Resources are allocated to the development of research

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104. See Anne Krueger, International Monetary Fund Deputy Managing Director, Address at the Fifth WTO Ministerial Conference: A New Proposal From the IMF (Sept. 10, 2003); see also Anne Krueger, International Monetary Fund Deputy Managing Director, Address to the World Trade Organization General Council (May 18, 2004). Being an academic in the past, the IMF Deputy Managing Director maintained that neither the IMF, nor the World Bank should provide funding to promote liberalisation of trade in the WTO. KRUEGER, *supra* note 42, at 35.

105. The practice of using financial assistance to promote international lawmaking is not completely new. World Bank's *InfoDev* is one previous, but not as far-reaching, example. This World Bank program on information technologies financed the work of a group of consultants incorporated in the Secretariat of the WTO to provide technical assistance in devising offers of market access, such as schedules of commitments and lists of exemptions on basic telecommunications, in the process of negotiations on telecommunication services. The influx of this type of “hybrid” policy advice and assessment in international lawmaking, which is half public-half corporate, is important to the understanding of the evolution of modern international law, particularly when assistance is directed not only at training in negotiating techniques of treaties, but specifically directed to guide their substantive content.

106. Anne Krueger refers to the debt crisis as an example of the potential functions of analysis, research, and dissemination of ideas in the activities of these institutions. She holds that promoting global conferences and publications such as the World Debt Tables, World Economic Outlook, and World Development Reports on that particular area serves to mitigate the “confusion,” to produce a convergence of visions, and subsequently, of policies. KRUEGER, *supra* note 42, at 25.

products and services that are then used by their organs and exported to the domestic level.<sup>107</sup> This “knowledge” is instrumental to advancing and refining liberalization. The IMF and the World Bank, for example, particularly are skilled in sectors such as foreign direct investment and sustainable development, which are relevant for the WTO, while the WTO has technical knowledge on the liberalisation of trade in sectors such as services, which are relevant to the IMF and the World Bank.

The research machinery of these institutions produce and process empirical, statistical, and economic data, as well as policy papers and position documents that contribute to domestic policymaking and reform.<sup>108</sup> These processes are vital since they function as the “scientific foundation” of the rules and programs deriving from the IMF, the World Bank, or the WTO. Thus, the type of research being promoted is instrumental in the service of their pre-defined policy agendas. Consequently, research activities inside these institutions are based on specific policy assumptions and their outcomes tend to generate a somewhat standardised type of results. In essence, these activities are guided in accordance with the purposes of their constitutive treaties and adapted to the prevailing ideas resulting from the balances of power held inside these institutions.

Therefore, the production of research and ideas, and their dissemination through technical assistance, capacity building, and training, complements the rule-based coordination referred to in this paper. An interesting example of this is how, in 1996, the World Bank reinvented itself to become the so-called *Bank of Knowledge*. Within this broad strategy, the World Bank is amplifying the function of trade in the development process. It intensively addresses the theory and practice of development from the trade angle and assigns significant resources to trade-related research, training, and technical assistance.<sup>109</sup>

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107. For ethnographic research, based on the WTO's operations in Laos, on the process of production of “knowledge” and the means through which the World Bank obtains authority and exercises power, see Michael Goldman, *The Birth of a Discipline: Producing Authoritative Green Knowledge, World Bank-Style*, 2 ETHNOGRAPHY 191-217 (2001). See also MICHAEL GOLDMAN, *IMPERIAL NATURE: THE WORLD BANK AND STRUGGLES FOR SOCIAL JUSTICE IN THE AGE OF GLOBALIZATION* (2005).

108. On the strategic relevance of document production and its processes within the machinery and functioning of the Fund, see RICHARD HARPER, *INSIDE THE IMF: AN ETHNOGRAPHY OF DOCUMENTS, TECHNOLOGY AND ORGANISATIONAL ACTION* (1998).

109. The vision of the World Bank regarding trade matters is based on integrating developing countries in the global economy through market access, export oriented production, and attraction of foreign direct investment. In a scenario of decreasing foreign aid, the World Bank amplifies the function of trade in the development process by advocating a more intense concentration of development strategies on trade liberalisation. For an example of the rationale developed by the World Bank and the IMF, see World Trade Organisation, *Market Access for Developing Country Exports—*

Consequently, the Bank has been able to progressively centralize the multilateral strategy of technical assistance related to trade. In fact, this financial institution already coordinates the Integrated Framework for Trade-Related Technical Assistance for developing countries.<sup>110</sup> In this sense, controlling the coordination of this type of soft-power strategy is starting to be increasingly crucial in modern global politics. Undoubtedly, coordinated institutional strategies based on these soft-power approaches complement rule-based coordination among international institutions to produce changes in institutional behaviour and thus influence domestic policies.

#### IV. The Meaning of “Coherence” in International Law

The rule-based coordination structure of the IMF, the World Bank, and WTO inevitably produces some perplexities. In essence, other international institutions and sectors of international law are at a clear disadvantage by not being included. The social values protected and promoted by non-economic institutions such as the UNEP and the UN human rights system, tend to have a lower comparative efficacy in relation to the IMF, the World Bank, or WTO due to failures in their institutional design and the inadequate allocation of resources to their functioning.<sup>111</sup> Consequently, excluding these institutions and their rules from this model of trilateral coordination does not help to strike a balance in their relations. Therefore, it seems reasonable to include non-economic institutions as equal participants under this rule-based coordination scheme. In this sense, inclusive horizontal coordination could contribute to the progressive development of checks and balances in global institutional architecture.

Currently, the policies of these institutions and those of the United Nations system are not distanced only from each other, but almost function on divergent tracks.<sup>112</sup> The package of instruments and tools

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*Selected Issues*, WT/WGTDF/W/14 (Oct. 18, 2002).

110. This partnership functions under the leadership of the World Bank with the assistance of an inter-institutional working group presided over by the WTO, and is helped by bilateral donors and international institutions (IMF, ICC, UNEP, and UNCTAD). The Integrated Framework encourages the inclusion of trade liberalisation in the policies of developing countries, the negotiation of trade agreements, such as the preparation for WTO accession, and the implementation of production adjustments.

111. For the list of institutions referred to in the Final Draft of the Uruguay Round and the provisions regulating their legal relevance in WTO law, see World Trade Organisation, Note by the Secretariat, *Sub-committee on institutional, procedural and legal matters—The WTO and other inter-governmental organisations*, PC/IPL/W/2 (June 29, 1994).

112. It is revealing to compare the coordination mechanism of these three organisations with the scheme of relations maintained by the WTO with the United Nations. The WTO General Council requested the Secretariat to devise a “global

advancing coordination between the IMF, the World Bank, and the WTO does not promote coherence with the remainder of institutions which make up global institutional architecture. The search for “coherence” through a reinforced mechanism of coordination limited to the three global economic institutions is an oxymoron. These multilateral institutions, and the ministries of finance and trade who administer them, concentrate in an expanding field of public policy, the economy, which is neither closed nor self-contained. The failure to include other institutions in this framework of coordination is thus a wrong choice.

This mechanism of coordination creates a legal and institutional structure at the service of a restricted concept of coherence. In doing so, it inevitably discriminates against the social values protected and promoted by other international norms and institutions. The terms of reference to their coordination structure are a limited group of shared values, which inevitably produce a particularly restricted phenomenon of path dependence in their activities. The comparative institutional advantage of these organisations, by administering access to finance and markets, together with the efficacy of their specialised framework of coordination, produces an imbalance in the proper functioning of international law. Therefore, there is a need to reconsider their concept of “coherence.” Opting for a model of restricted coordination has a clear political significance and important institutional and legal implications. It also contrasts sharply with the ideal of an alternative wider, open, and inclusive coordination structure. Whichever way we look at it, it is scarcely coherent.

Michael Camdessus maintains that today, for the first time in history, we perceive the need to organise and manage the world.<sup>113</sup> It is clear that interdependence requires new ways of handling governance on

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agreement” with the United Nations based on the same relationship that has previously existed between GATT and the United Nations. As a result, this three page “global agreement” merely transcribes an exchange of notes between the Director General of the WTO and the U.N. Secretary General. This exchange of notes determines that the previous agreements and practices (described in U.N. Doc. AG. A/AC.179/5 (1976)) constitute an adequate foundation on which to continue their relations. However, that second instrument again refers to an August 1952 exchange of letters between the U.N. Secretary General and the GATT Secretariat where some broad commitments are finally specified. See U.N. Doc. ONU/5476/Add.12 (1974). For a document explaining this perplexing process and transcribing the instruments, see World Trade Organisation, Director General Report, Relations Between the WTO and United Nations, *Arrangements for effective cooperation with other intergovernmental organisations*, WT/GC/W/10 (Nov. 3, 1995).

113. See Michael Camdessus, *The IMF at the Start of the Twenty-first Century: What Has Been Learned? On Which Values Can We Establish a Humanised Globalization?*, in *THE IMF AND ITS CRITICS: REFORM OF THE GLOBAL FINANCIAL ARCHITECTURE* 427 (David Vines & Christopher L. Gilbert eds., 2004).

a global scale. In this sense, achieving coherence has to be approached seriously. The ministers who administer the IMF, the World Bank, and the WTO are well aware of the advantages of strengthening the coordination of these three institutions. In this respect, managing the integration of the international economy generates a sustained pressure towards their coordination.<sup>114</sup> Nevertheless, this particular framework of reinforced coordination has ignored the necessary inclusion of other international institutions under the scheme. In this sense, honouring the idea of coherence inevitably requires reforming these coordination structures to include other key multilateral institutions.

In addition, the search for coherence in global policymaking requires some type of integration of other rules of international law in the processes and procedures of these three organisations. Embarking on such an ambitious global project without paying any attention whatsoever to the meaning of coherence rooted in our western legal tradition is quite disconcerting. Any normative system requires some minimal ordering. There has been a great deal of development in modern legal thought regarding this question. In this sense, coherence is defined generally as the absence of antinomies, or conflicts between norms, within a legal system.<sup>115</sup> This same meaning applies to modern international law. Therefore, coherence as the absence of antinomies should be the master value in any project of global institutional coordination. It is clearly a more appropriate meaning of coherence than the one employed in the management of the international economy by the IMF, the World Bank, and the WTO. As such, it is, therefore, the legitimate point of departure for any global institutional project oriented to achieve coherence in global policymaking. It would be a great advance if ministers of finance and trade were to take into consideration this well-founded legal concept when promoting a process of inter-institutional coordination based on the idea of coherence.

At present, two great institutional visions are operating in parallel and need to converge. The IMF, the World Bank, and the WTO are situated on one side, and on the other, a diverse group of specialised bodies of the United Nations. In practice, the IMF, the World Bank, and the WTO have full autonomy vis-à-vis the United Nations. To strike a balance, the precarious institutional structure resulting from the 2002 United Nations Conference on Financing for Development has been suggested as a forum for advancing coherence in trade, finance, and

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114. Stephen A. Silard, *International Economic Institutions: The Challenge of Coordination*, 4 AM. U. INT'L L. REV. 67-89 (1989).

115. See NORBERTO BOBBIO, *TEORÍA GENERAL DEL DERECHO* 216 (1991).

development.<sup>116</sup> The position, resulting from this conference, was made clear in the United Nations' Monterrey Consensus. The Final Statement of this conference made an appeal for coherence in support of the development and leadership process of the United Nations and the United Nations Economic and Social Council ("ECOSOC").<sup>117</sup> In addition, ECOSOC has begun to organise regular High Level Meetings with the Bretton Woods institutions.<sup>118</sup> These annual meetings, initiated in 1998, were opened to the WTO in 2000 and, four years later, to the United Nations Conference on Trade and Development ("UNCTAD").<sup>119</sup>

Perhaps these initiatives could open up new paths and institutional developments.<sup>120</sup> In this respect, the latent function of coordination attributed to ECOSOC by the United Nations Charter has to be upgraded in relation to these economic institutions. Failing this, a new institution needs to be created. Policy interdependence encourages deeper institutional integration. Inevitably, the course of the three international economic institutions and the United Nations system should converge, but the path ahead is a long one.<sup>121</sup> Therefore, it is important to

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116. The WTO's Doha Declaration also addresses the relations between trade, finance, and development through the establishment of a Working Group on Trade, Debt, and Finance to examine the relationship between trade, debt, and finance. World Trade Organisation, Ministerial Declaration of 14 November 2001, WT/MIN(01)/DEC/1, 41 I.L.M. 746 (2002), at ¶ 36. The aim of this working group constituted on the initiative of developing countries is to address and propose measures "to contribute to a durable solution to the problem of external indebtedness of developing and least-developed countries, and to strengthen the coherence of international trade and financial policies, with a view to safeguarding the multilateral trading system from the effects of financial and monetary instability." The task of coherence is now being also addressed by this working group as well as in special sessions of the Committee for Trade and Development. See generally World Trade Organization, Working Group on Trade, Debt, and Finance, *Note by the Secretariat: Towards Greater Coherence*, Doc. WT/WGTDF/W/17 (Nov. 13, 2002). See also World Trade Organization, Working Group on Trade, Debt, and Finance, *Report of the Meeting of 17 December 2002*, Doc. WT/WGTDF/M/4 (Jan. 17, 2003).

117. See United Nations, Final Outcome of the International Conference on Financing for Development "Addressing systemic issues: enhancing coherence and consistency of the international monetary financial and trading systems in support of development," U.N. Doc. A/CONF.198/3/Corr.1, ¶¶ 52-67 (Mar. 12, 2002) [hereinafter Final Outcome].

118. Establishing these meetings was one of the several measures recommended by the General Assembly in Resolution 50/227. See G.A. Res. 50/227, ¶ 88, U.N. Doc. A/RES/50/227 (July 1, 1996).

119. The first Special High-Level Meeting of the ECOSOC, the IMF, the World Bank, and the WTO was held on April 22, 2002 in New York. UNCTAD was incorporated two years later, on April 26, 2004.

120. The Final Declaration appeals for these meetings to assume a preliminary role in promoting dialogue and exchange of opinions in questions of coherence, coordination, and cooperation in the context of implementation of the Monterrey Consensus. See Final Outcome, *supra* note 117, at ¶ 69.

121. It is revealing example of the long-standing state of affairs that the first time the President of the Bank addressed the General Assembly of the United Nations was just



coordinate the ministers and national trade agencies with their counterparts in finance and development on an international scale.<sup>122</sup> However, it is equally important also to include heads of other areas of government, which, at best, are under-represented, in these forums. The intense internationalisation of the activities of ministries of trade and finance and their related agencies has fragmented foreign policies and has led progressively to the creation of efficient, specialised international institutions that extend their power, vis-à-vis other agencies, on a domestic and international scale. This has been done mainly by constructing international institutions that grant access to finance and market access in exchange for state compliance with specific economic "prescriptions."

Delivering coherence in global policymaking requires the present status quo to be reformed by: (1) strengthening the international institutional architecture in those fields of competence of other branches of government; (2) increasing their international legislative and regulatory activities; and (3) allowing them to share jurisdictional competence with the Fund, the Bank, and WTO over access to finance and market access. The mechanism of coordination of these economic institutions is "searching for coherence" in the wrong place. Any model of institutional coordination aimed at achieving coherence should be based on the conventional and mainstream meaning of coherence in law.<sup>123</sup> Coherence can only be achieved by avoiding contradiction. Therefore, coherence can only be obtained through a wider and deeper coordination with other international institutions administering

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two years ago. See James D. Wolfensohn, President, World Bank Group, Address to the United Nations High-Level Dialogue on Financing Development, New York (Oct. 30, 2003).

122. There is no global meeting forum for finance, development, and trade ministries. Up to now, the coordination of ministries of finance, development, and trade was decentralised and indirect through high-level officials and staff of the IMF, the World Bank, and the WTO.

123. Renato Ruggiero, the first Director-General of WTO referred to the management of potential WTO-IMF conflicts as one of the advantages of the IMF-WTO agreement when addressing some arising concerns among WTO delegates in relation to this agreement: "[A]t times in the course of our work we may come upon possible policy measures that the IMF or the World Bank may have proposed or may be advancing that may *not be obviously consistent with agreed rights and obligations under the WTO*. This could raise real subsequent difficulties for the Member concerned and for the Membership" (emphasis added). World Trade Organisation, *Statement by the Director-General on Consultation and Coherence Agreements Between the WTO, the IMF and the World Bank: Addendum*, WT/L/194/Add.1 (Nov. 18, 1996). In his words, the agreement "provides the mechanism" to address potential IMF and World Bank concerns on these type of issues. *Id.* Of course, this sensible line of reasoning should also reasonably be applied to the rest of international institutions by developing equivalent coordinating structures with them.

specialized areas of international law. Other policy choices, in essence, are bluntly incoherent.

Fortunately, there have been some recent changes in attitude. In regard to WTO, Supachai Panitchpakdi defined the area of “policy coherence” during his first press conference as Director General, as an area for improvement that could be much wider than the original Bretton Woods institutions. Thus, he asserted the need to work in tandem with the World Bank, the IMF, UNCTAD, UNEP, ILO, and the WHO in the field of sustainable development.<sup>124</sup> His predecessor, Michael Moore, also asserted the need to improve coordination with other institutions when recalling the success of the WTO-IMF and WTO-World Bank agreements. He said, “[W]e find ourselves operating at present mostly on parallel tracks, and lacking policy guidance from our governing bodies on how to make those tracks converge.”<sup>125</sup> Moore referred to the risk of duplication and overlapping in a scenario in which international institutions operate “in relative isolation from one another.”<sup>126</sup> In fact, in meetings of the former Administrative Coordination Committee of the United Nations, he defended the creation of a group of experts “without vested interests” to devise an inventory defining with greater precision the functions and purposes of existing international institutions.<sup>127</sup>

Certainly, there are several policy options that can be used to achieve coherence in global policymaking. The reasonable policy is to upgrade the coordination of international economic institutions with other global non-economic institutions. However, it is not Secretariats and staff of the IMF, the World Bank, and the WTO that can change policy in this direction, but those domestic economic agencies that have designed these institutions and now control their decision making processes. In the absence of those changes, it is domestic non-economic agencies that can help in this regard by taking a stronger and more creative lead in international lawmaking. In this sense, it would be helpful to develop new international rules that secure the functioning of global economic institutions paying deference to the norms, expertise, and findings of global non-economic institutions. In fact, the very idea of coherence in international law suggests the need to do so.

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124. See Supachai Panitchpakdi, World Trade Organization Director-General, First Press Conference (Sept. 2, 2002).

125. *Id.*

126. *Id.*

127. Michael Moore, World Trade Organization Director General, Address: Coherence in global economic policy-making: WTO cooperation with the IMF and the World Bank, General Council informal meeting (Jan. 18, 2001).

